

The size of the food shortage can be debated; that there is hunger in Kampuchea cannot. A February 9 report from the State Department admitted that the food situation in Kampuchea is "precarious" and noted that malnutrition plagues many parts of the country. How will the United States respond?

Four years ago, Representative Millicent Fenwick urged her colleagues in the House to approve aid for Kampuchea: "We have never cared who sat in the palaces of the world; we have always been concerned about who is starving in the streets." Today, those who could make a difference do not share that sentiment. □

#### DISPUTE OVER C.I.A. FILES

## The Case for the New F.O.I.A. Bill

IRA GLASSER

**L**ater this month a bill that has evoked concern and disagreement among civil libertarians and critics of the Central Intelligence Agency will be sent to the floor of the House of Representatives. The bill, which would exempt certain kinds of C.I.A. files from normal requirements under the Freedom of Information Act, has been scrutinized and debated in a series of recent public hearings before various Congressional committees. After many revisions, the latest version of this bill, H.R. 5164, has a good chance of passing in the full House, partly because, after a long drafting process, it has gained the support of the American Civil Liberties Union.

The A.C.L.U.'s position has been attacked in several forums and publications, among them *The Nation* [see Angus Mackenzie, "The Operational Files Exemption," September 24, 1983]. Some of our critics have gone so far as to suggest that the A.C.L.U. has become, wittingly or unwittingly, an accomplice in weakening the F.O.I.A.

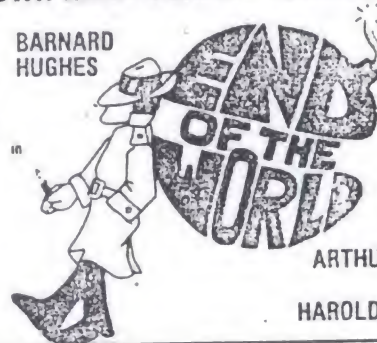
In light of those charges, it is important to understand what the American Civil Liberties Union has been doing, why it supports a much-changed version of legislation it originally opposed and why it thinks the legislation represents a modest victory for those who support the F.O.I.A.

The Freedom of Information Act is one of the most important laws enacted by Congress. By making government information available to the public, the act strengthens America's commitment to informed, robust debate on all public policies. The act is especially vital with respect to the C.I.A., whose illegal activities are encouraged by the shroud of secrecy that envelops them. While the shroud has not yet been sufficiently lifted, over the last decade the F.O.I.A. has been a significant tool in bringing the C.I.A.

*Ira Glasser is national executive director of the American Civil Liberties Union.*

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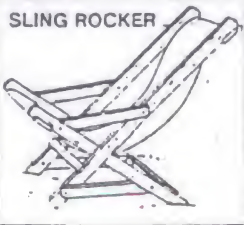
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under increased public and Congressional scrutiny.

But most people who submit requests to the agency under the F.O.I.A. encounter two main problems: the C.I.A. withholds information it should release by hiding behind exaggerated claims of national security, which the courts have never had the courage to reject; and when it does decide to release information it takes an intolerable amount of time—often two to three years.

Aside from pure obstructionism, a primary cause for delay is the time-consuming search the agency undertakes through its "operational" files when processing an F.O.I.A. request. Basically, operational files contain documents and information related to the intelligence *process* rather than the intelligence *product*. For example, a document that describes the technical capacity and location of a sophisticated optics device is considered operational; the information obtained by that device is not. Similarly, how an intelligence source was spotted and recruited, how much he was paid, the details of where and when he meets with his case officer, are all considered operational; any information provided by that source is not.

Such operational information, with a few important exceptions described below, is invariably classified and is therefore exempt from release under the provisions of the F.O.I.A. The courts have never ordered the release of such information, and are not likely to under any conceivable standard of classification. Nonetheless, every time a F.O.I.A. request is made to the C.I.A., all operational files have to be reviewed.

To alleviate the problem of delays, the A.C.L.U. set out to draft legislation that would spare the agency from searching through its operational files. At the same time we wanted to insure that the kind of information currently being released or likely to be released in the future would not be exempt or improperly hidden in operational files. We felt that such legislation would obligate the C.I.A. to respond to requests more quickly, while guaranteeing that no new curbs on information would result.

Of course, the C.I.A., already on record as favoring legislation that would exempt it from all provisions of the act, jumped at the opportunity to support a bill that would exempt it from searching its operational files. Our task, therefore, was to defeat the legislation unless its language strictly limited the exemption. That was not easy.

After much lobbying, the Senate passed S. 1324 which was much improved over the version that was introduced. It was not adequate in several important respects. If that had been the final version of the legislation, we would have opposed it and we believe our opposition would have killed it.

Fortunately, the legislative process is just that, a process. Accordingly, after the Senate approved its bill, we set to work on the House version. For us, the House is a much more hospitable forum, and we thought we stood a good chance of getting everything we wanted. We did. In its present form this bill differs markedly from the Senate's. We support this version because we believe it will obligate the C.I.A. to release information more quickly and prevent



from withholding any information it is currently obligated to release. Here is a summary of the major provisions of H.R. 5164:

§ Operational files in three divisions of the C.I.A.—the Directorate of Operations, the Directorate for Science and Technology and the Office of Security—would be exempt from search and review. (A few important exceptions are noted in the bill and summarized below.) The term "operational" is defined narrowly to include only files that document the means of acquiring information, as opposed to those that contain the information itself. All other C.I.A. files, including those in the three specified divisions, will be subject to search and review under the Freedom of Information Act.

§ All documents from operational files that are disseminated outside the three divisions, whether within the C.I.A. or elsewhere in the government, will be subject to search and review—even a document that concerns the most intimate details of an operation and is sent only to the director of Central Intelligence. Once disseminated, information cannot be exempt, even if it is kept in an otherwise exempt operational file. That includes any document shown to someone outside the three divisions on an "eyes only," no-copy basis and returned to the operational file.

§ All information in operational files concerning covert operations will be subject to search and review, unless the very existence of the covert operation is properly classified information.

§ All information in operational files concerning the subject matter of an investigation of improper or illegal conduct by the C.I.A. will be subject to search and review. Such investigations may be conducted by the agency's inspector general or general counsel, by Congressional oversight committees or by the President's Intelligence Oversight Board. The C.I.A. also initiates an investigation whenever a private citizen makes an allegation of improper or illegal conduct: for example, that an organization has been illegally infiltrated. (It does not investigate claims of a clearly frivolous nature, such as "the C.I.A. is manipulating my brain waves.") Regardless of an investigation's outcome, the C.I.A. will be required, in response to an F.O.I.A. request, to search its operational files for information concerning the alleged abuse. This provision insures that all information in the operational files concerning abuses investigated by the Church and Pike committees will continue to be accessible and that in the future, similar information on alleged abuses will be available.

§ Operational files must be searched in response to U.S. citizens or permanent resident aliens who request information about themselves. This provision preserves the access to information currently available to individuals.

§ Federal courts will have the right to review whether a particular file meets the legal definition of "operational" or whether particular documents are improperly kept solely in operational files. This guarantee significantly improves on the Senate version and clearly opposes the C.I.A. position, taken during Senate hearings last June, that no judicial review should be permitted.

§ Finally, the bill does not apply retroactively to any lawsuit pending on February 7, 1984, the day before the House began hearings on the bill.

Some critics of the A.C.L.U.'s position say the bill would allow the C.I.A. to withhold information it is currently obligated to release, or conceivably would be obligated to release under a more liberal standard of classification. That claim is false. Various people have shown us documents released under current law that arguably might not be released under the proposed legislation. We have examined them all, and in every case the document would still be released under one of the exceptions provided in H.R. 5164. Moreover, even a liberal administration would without doubt continue to classify the kinds of sources and methods the bill would exempt.

Others suggest that the A.C.L.U. has compromised important principles by lobbying for the bill. That, too, is false. If anyone has compromised in this process, it is the C.I.A., which initially opposed many of the provisions on which we insisted.

Our position was unflinching: from the beginning, we maintained that we would oppose the bill unless each of our concerns was adequately met. Although the Senate bill did not meet them all, H.R. 5164 does. As A.C.L.U. staff counsel Mark Lynch testified before Congress on May 10, "Any movement away from what has been achieved in H.R. 5164 would be unacceptable, and we would oppose any tinkering with this bill in a House-Senate conference."

Such tinkering is unlikely because Senators Barry Goldwater and Daniel Moynihan, chair and vice chair, respectively, of the Senate Intelligence Committee which helped draft the Senate version, have informed the House





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committee in writing that they will accept H.I. without a conference.

The A.C.L.U. believes that the bill deserves the of information act advocates. It promises to speed response to requests and imposes various legal obligations on the C.I.A. that insure against the loss of information now available or likely to become available. While the biggest triumph, it is a significant step forward. Certainly not the disaster some have made it out to be.

**Vatican***(Continued From Front Cover)*

testify to that. Missionaries from France, Ireland and where implanted their faith in Africa, where Catholic fast-growing minority in some countries, under others but recognized, as everywhere else in the World, as a religion of the elite. For a long time the World Catholic elite, shaped in the image of Rome, self-confidence when confronted by the will or disapproval of the Vatican. But that has changed in recent years.

Since it appeared in Latin America more than years ago, liberation theology has bothered the V Priests who allied themselves with the poor or brutal governments embarrassed bishops who tolerated were friendly to those in power. The situation was with the bishops whenever they sided with the priests. 1970s Dom Helder Câmara, Archbishop of Rio overpopulated and perennially drought-stricken no Brazil, became perhaps the most famous of the sympathetic bishops. The Brazilian press was forbidden to mention name, except critically. He was called a communist home was burned down several times. His priest beaten and arrested, and one of his aides was killed. Helder may be a hero to the priests, the nuns and the but the Vatican has never really supported him.

Also important was Archbishop Oscar Arnulfo Romero, the primate of El Salvador, who started out as a conservative but became openly critical of the government after the murder of a priest who was a close friend. March 24, 1980, just before Easter, Romero was murdered as he said mass in a chapel in San Salvador. The murder widely reported to have come from Maj. Roberto d'Aubuisson who had been the National Guard's intelligence chief a few months before. On the fourth anniversary of that with El Salvador rent more than ever by a bloody civil war and d'Aubuisson standing as a presidential candidate, an unauthorized parade of mothers of the disappeared marched in commemoration to the cathedral where Romero was buried, carrying banners with the Archbishop's words: "not fear those who kill, because they cannot kill the soul." Maurizio Clerici, correspondent for Milan's *Corriere della Sera*, described the scene outside the cathedral.

*T.M. Pasca is an American journalist who writes for The Nation from Rome.*



I. Glasser

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